



#513-18

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**City of Newton, Massachusetts**  
Department of Planning and Development  
1000 Commonwealth Avenue Newton, Massachusetts 02459

Ruthanne Fuller  
Mayor

Barney Heath  
Director

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## PUBLIC HEARING MEMORANDUM

Public Hearing Date: November 8, 2018  
Land Use Action Date: January 29, 2019  
City Council Action Date: February 4, 2019  
90-Day Expiration Date: February 6, 2019

DATE: November 2, 2018

TO: City Council

FROM: Barney Heath, Director of Planning and Development  
Jennifer Caira, Chief Planner for Current Planning  
Neil Cronin, Senior Planner

SUBJECT: **Petition #513-18**, for SPECIAL PERMIT/SITE PLAN APPROVAL to further increase the nonconforming floor area ratio (FAR) from .42 to .44, where .37 is the maximum allowed as of right at **43 Kenwood Avenue**, Ward 6, Newton Centre, on land known as Section 64, Block 20, Lot 22, containing approximately 10, 652 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec. §3.1.9, §7.8.2.C.2, and §7.4 of the City of Newton Rev Zoning Ord, 2015.

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The purpose of this memorandum is to provide the City Council and the public with technical information and planning analysis conducted by the Planning Department. The Planning Department's intention is to provide a balanced review of the proposed project based on information it has at the time of the public hearing. Additional information about the project may be presented at or after the public hearing for consideration at a subsequent working session by the Land Use Committee of the City Council.



**43 Kenwood Avenue**

## EXECUTIVE SUMMARY

The property located at 43 Kenwood Avenue contains a 10, 667 square foot lot in the Single Residence 2 (SR-2) zone in Newton Centre. The lot is improved with a 2.5-story, single-family residence constructed circa 1890 that is an example of Colonial Revival architecture. The petitioners are seeking to construct a second-floor rear addition totaling 161 square feet. The addition will further increase the nonconforming floor area ratio (FAR) for the lot, requiring a special permit. If approved, the dwelling will total 4, 679 square feet, 732 square feet above the maximum allowed as of right. The Planning Department is unconcerned with the petition to further increase the nonconforming FAR because the addition is to the rear of the structure, not visible from the street, and within the existing footprint of the structure.

### I. SIGNIFICANT ISSUES FOR CONSIDERATION:

When reviewing this request, the Council should consider whether:

- The proposed increase in the nonconforming FAR from .42 to .44, where .37 is the maximum allowed by-right, is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood. (§3.1.9, and §7.8.2.C.2)
- The proposed increase in nonconforming FAR is not substantially more detrimental than the existing nonconforming structure is to the neighborhood. (§3.1.9 and §7.8.2.C.2)

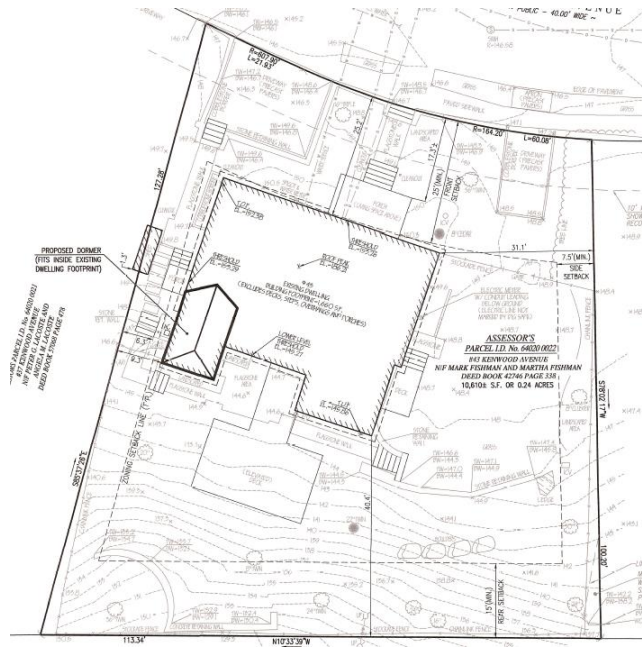
### II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

#### A. Neighborhood and Zoning

The subject property is located on Kenwood Avenue in the SR-2 zone in Newton Centre. The SR-2 zone encompasses the immediate area. As such, the area consists entirely of single-family uses (**Attachments A and B**).

#### B. Site

The site consists of 10, 667 square feet of land and is improved with a 2.5-story Colonial Revival single-family dwelling. The lot is served by two curb cuts providing access to two separate surface parking facilities along the site's frontage. The grade of the lot slopes downward significantly from the rear of the dwelling towards the rear lot line and all four boundaries contain mature landscaping.



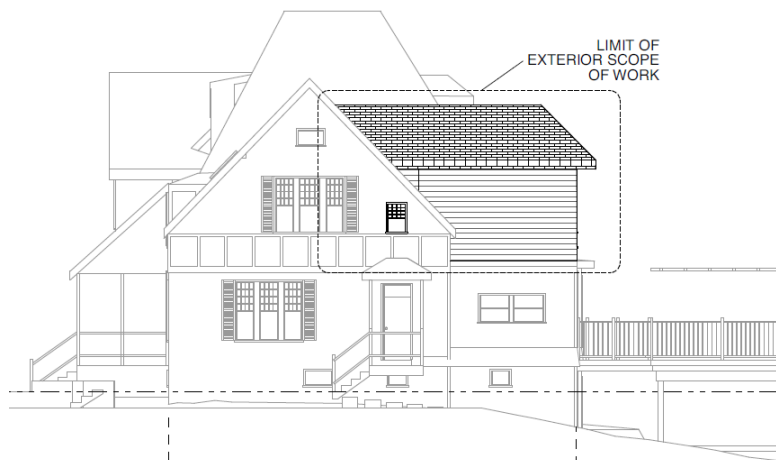
III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The principal use of the site is and will remain single-family.

B. Building Design

The petitioners are seeking to construct a rear addition to the second floor. The addition will increase the dwelling by 161 square feet. The addition will be constructed over a sunroom on the first floor, therefore not expanding the structure's footprint. The Planning Department is unconcerned with the addition because it is to the rear of the dwelling, not visible from the street.



SEE A301 FOR MATERIAL INFO

C. Site Design

The petitioners are not proposing to alter the site.

D. Parking and Circulation

The petitioners are not proposing any changes to either the parking or circulation.

E. Landscaping

A landscape plan is not required with this petition.

IV. TECHNICAL REVIEW

A. Technical Considerations (Chapter 30, Newton Zoning Ordinance):

The Zoning Review Memorandum provides an analysis of the proposal regarding zoning (**Attachment C**). Based on the completed Zoning Review Memorandum, the petitioner is seeking the following relief:

- §3.1.9 and §7.8.2.C.2 of Section 30, to further increase the nonconforming FAR.

B. Engineering Review

This petition does not meet the minimum threshold for Engineering Review.

C. Historic Preservation Review

This petition does not meet the minimum threshold for Newton Historical Commission review.

V. PETITIONER'S RESPONSIBILITIES

The petition is considered complete at this time.





**ATTACHMENTS:**

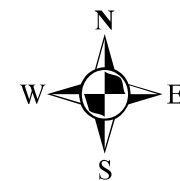
- Attachment A:** Land Use Map  
**Attachment B:** Zoning Map  
**Attachment C:** Zoning Review Memorandum  
**Attachment D:** DRAFT Council Order

# Attachment A Zoning Map Kenwood Ave., 43

*City of Newton,  
Massachusetts*

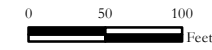
## Legend

-  Single Residence 2
-  Building Outlines
-  Surface Water
-  Property Boundaries



The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.

CITY OF NEWTON, MASSACHUSETTS  
Mayor - Setti D. Warren  
GIS Administrator - Douglas Greenfield



Map Date: October 22, 2018



# Attachment B Land Use Map Kenwood Ave., 43

*City of Newton,  
Massachusetts*

## Legend

### Land Use

### Land Use

-  Single Family Residential
-  Vacant Land
-  Building Outlines
-  Surface Water
-  Property Boundaries



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CITY OF NEWTON, MASSACHUSETTS  
Mayor - Setti D. Warren  
GIS Administrator - Douglas Greenfield

0 50 100  
Feet

Map Date: October 22, 2018





Ruthanne Fuller  
Mayor

Attachment C

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Barney S. Heath  
Director

ZONING REVIEW MEMORANDUM

Date: September 5, 2018

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official  
Jennifer Caira, Chief Planner for Current Planning

Cc: Mark and Martha Fishman, Applicants  
Stephan Potts, Architect  
Barney S. Heath, Director of Planning and Development  
Ouida Young, Acting City Solicitor

RE: Request to further increase nonconforming FAR

Applicant: Mark and Martha Fishman	
Site: 43 Kenwood Avenue	SBL: 64020 0022
Zoning: SR2	Lot Area: 10,652 square feet
Current use: Single-family dwelling	Proposed use: No change

**BACKGROUND:**

The property at 43 Kenwood Avenue consists of a 10,652 square foot lot improved with a single-family residence constructed circa 1890. The petitioners propose to construct a 161 square foot second floor addition within the existing footprint to create a closet off the master bedroom. The proposed changes will further increase the nonconforming FAR, requiring a special permit.

The following review is based on plans and materials submitted to date as noted below.

- Zoning Review Application, prepared by Stephan Potts, architect, dated 8/2/2018
- FAR Worksheet, submitted 8/2/2018
- Plot Plan, prepared by GRE Surveying, surveyor, dated 7/23/2002
- Architectural Plans, prepared by Stanev Potts Architects, dated 8/2/2018

**ADMINISTRATIVE DETERMINATIONS:**

- The applicants' existing FAR is .42, where .37 is the maximum allowed. The proposed addition adds 161 square feet to the dwelling, resulting in an FAR of .44. A special permit pursuant to Sections 3.1.9 and 7.8.2.C.2 is required to further increase the already nonconforming FAR.

SR2 Zone	Required	Existing	Proposed
Lot Size	10,000 square feet	10,667 square feet	No change
Frontage	80 feet	82 feet	No change
Setbacks			
• Front	25 feet	~30 feet	No change
• Side	7.5 feet	9.2 feet	No change
• Rear	15 feet	39.8 feet	No change
Max Number of Stories	2.5	2.5	No change
Height	36 feet	29.2 feet	No change
FAR	.37	<b>.42</b>	<b>.44</b>

- See "Zoning Relief Summary" below:

<b>Zoning Relief Required</b>		
<i>Ordinance</i>		<i>Action Required</i>
§3.1.9, §7.8.2.C.2	Request to further increase nonconforming FAR	S.P. per §7.3.3



CITY OF NEWTON  
IN CITY COUNCIL

ORDERED:

That the City Council, finding that the public convenience and welfare will be substantially served by its action, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, grants approval of the following SPECIAL PERMIT/SITE PLAN APPROVAL to further increase the nonconforming floor area ratio (FAR) from .42 to .44, where .37 is the maximum allowed as of right as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Gregory Schwartz:

1. The proposed increase in the nonconforming floor area ratio from .42 to .44, where .37 is the maximum allowed by right is consistent with and not in derogation of the size, scale, or design of other structures in the neighborhood and will not be substantially more detrimental than the existing nonconforming structure is to the neighborhood because the addition is to the rear of the structure, not visible from the street, and within the footprint of the existing structure (§3.1.9 and §7.8.2.C.2).

PETITION NUMBER: #513-18

PETITIONER: Mark and Marth Fishman

LOCATION: 43 Kenwood Avenue, on land known as Section 64, Block 20, Lot 22, containing approximately 10,652 square feet of land

OWNER: Mark and Marth Fishman

ADDRESS OF OWNER: 43 Kenwood Avenue  
Newton, MA 02459

TO BE USED FOR: Single-Family Dwelling

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: §3.1.9 and §7.8.2.C.2 to further increase the nonconforming FAR to construct a rear addition.

ZONING: Single Residence 2 district

Approved subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this special permit/site plan approval shall be located and constructed consistent with:
  - a. Site Zoning Plan, signed and stamped by Stephan K. Potts, Registered Architect, dated September 28, 2018
  - b. Architectural Plans, prepared by Stanev Potts Architects, signed and stamped by Stephan K. Potts, dated September 28, 2018, consisting of the following five (5) sheets:
    - i. A-203 Proposed Second Floor Plan
    - ii. A-301 West Elevation
    - iii. A-302 South Elevation
    - iv. A-303 East Elevation
    - v. A-304 North Elevation
2. Prior to the issuance of any building permit, the petitioner shall provide a final site plan for review and approval by the Department of Planning and Development, Engineering Division of Public Works, and Fire Department.
3. No building permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioners have:
  - a. Recorded a certified copy of this board order for the approved Special Permit/Site plan with the Registry of Deeds for the Southern District of Middlesex County.
  - b. Filed a copy of such recorded board order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
  - c. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
4. No Final Inspection/Occupancy Permit for the use covered by this special permit/site plan approval shall be issued until the petitioners have:
  - a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by an architect certifying compliance with Condition #1.
  - b. Submitted to the Director of Planning and Development and Commissioner of Inspectional Services final as-built plans in paper and digital format signed and stamped by a licensed architect.